Carson Trailer, Inc. *and* Sheet Metal Workers International Association, Local Union No. 170, AFL–CIO. Cases 21–CA–37999 and 21–CA–38141

August 29, 2008

DECISION AND ORDER

BY CHAIRMAN SCHAUMBER AND MEMBER LIEBMAN

On July 16, 2008, Administrative Law Judge William G. Kocol issued the attached decision. The Respondent filed an "Objection to the Administrative Law Judge's Decision and Argument in Support of Exception" and the General Counsel filed a "*Limited* Exception to the Administrative Law Judge's Decision and Argument in Support of Limited Exception." Subsequently, the General Counsel filed a "Motion To Strike Respondent's Exceptions Document."

The National Labor Relations Board[1] has considered the decision and the record in light of the exceptions[2] and arguments and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.[3]

We grant the General Counsel's motion to strike the Respondent's exceptions document. The Respondent's exceptions do not meet the minimum requirements of Section 102.46(b) of the Board's Rules and Regulations. Addressing the judge's findings that the Respondent violated the Act by laying off Ernesto Tolentino and threatening employees for engaging in union activities, the Respondent merely refers to the judge's conclusions and states that the "evidence does not support such a determination." As to the judge's remedy, the Respondent argues only that remedies are inappropriate because there is "insufficient evidence" to support the violations found, "given the General Counsel's burden of proof." We find that the Respondent has failed to allege with any particularity the errors it contends the judge committed, or on what grounds it believes the judge's decision should be overturned. In addition, the Respondent fails to designate the portions of the record on which it relies, as the Board's Rules also require. In the circumstances, we find, in accordance with Section 102.46(b)(2), that the Respondent's exceptions should be disregarded. See, e.g., *Metropolitan Transportation Services,* 351 NLRB 657 fn. 5 (2007); *Conley Trucking*, 349 NLRB 308, 308 fn. 2 (2007), enfd. 520 F.3d 629 (6th Cir. 2008); *Thriftway Supermarket*, 294 NLRB 173 fn. 2 (1989). We therefore adopt the judge's findings and conclusions that the Respondent violated Section 8(a)(3) and (1) of the Act, in the absence of exceptions.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Carson Trailer, Inc., Gardena, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(e).

"(e) Within 14 days after service by the Region, post at its Broadway facility in Gardena, California, copies of the attached notice marked "Appendix."[6] Copies of the notice, in both English and Spanish, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail at its own expense, copies of the notices to all current employees, and former employees employed by the Respondent at any time since September 7, 2007."

Cecelia Valentine and *Stephanie Cahn, Esqs.,* for the General Counsel.

Travis M. Gemoets, Esq. (Jeffer Mangels Butler & Marmaro LLP), of Los Angeles, California, for the Respondent.

[1] Effective midnight December 28, 2007, Members Liebman, Schaumber, Kirsanow, and Walsh delegated to Members Liebman, Schaumber, and Kirsanow, as a three-member group, all of the Board's powers in anticipation of the expiration of the terms of Members Kirsanow and Walsh on December 31, 2007. Pursuant to this delegation, Chairman Schaumber and Member Liebman constitute a quorum of the three-member group. As a quorum, they have the authority to issue decisions and orders in unfair labor practice and representation cases. See Sec. 3(b) of the Act.

[2] No exceptions were filed to the judge's dismissal of the allegations that the Respondent violated Sec. 8(a)(1) of the Act by threatening to move its business overseas or to deny unemployment benefits to laid-off employees if employees supported the Union.

[3] The General Counsel has excepted to the judge's failure to include in his recommended Order a provision that the notice to employees be posted in both English and Spanish. We find merit in the exception. The record shows that most of the employees at the Respondent's Broadway facility, where the violations occurred, are Spanish speaking. After laying off Tolentino, the Respondent conducted a mandatory employee meeting at that facility in Spanish. In addition, each of the seven nonsupervisory employees who testified in this proceeding did so through a Spanish interpreter. Accordingly, we shall modify the recommended Order to provide that the notice be posted in both English and Spanish. See *Caribe Staple Co.*, 313 NLRB 877 (1994); *Sun World, Inc.*, 271 NLRB 49 fn. 1 (1984), enfd. mem. 843 F.2d 501 (9th Cir. 1988). The General Counsel sought a posting remedy at the Broadway facility only.

We shall also modify par. 2(e) of the judge's recommended Order to correctly identify the appropriate Regional Office.

Robert Sanchez, Organizer, for the Union.

DECISION

STATEMENT OF THE CASE

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Los Angeles, California, on May 12–13, 2008. The charges were filed on September 14 and December 4, 2007,[1] by the Sheet Metal Workers International Association, Local Union No. 170, AFL–CIO (the Union) and the order consolidating cases, consolidated complaint and notice of hearing was issued January 31, 2008. The complaint alleges that Carson Trailer, Inc. (Respondent) violated Section 8(a)(1) by making several threats to employees and violated Section 8(a)(3) and (1) by laying off employee Ernesto Tolentino because he supported the Union. Respondent filed a timely answer that, as clarified at the hearing, admitted the filing and service of the charges, interstate commerce, jurisdiction, labor organization status, and agency status. The answer denied that Respondent violated the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following.[2]

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation, is engaged in the manufacture of custom towing trailers at its facility in Gardena, California, where during the 12-month period ending September 30 it purchased and received goods valued in excess of $50,000 directly from points outside the State of California. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Respondent manufactures commercial and recreational trailers. It has facilities located in and near Gardena, California. One facility is located on Broadway and another on Maple. Employees at the Maple facility build the frames for the trailers; these frames are sent to the Broadway facility where employees finish the trailers. Jesse Rebollar is plant manager at the Broadway facility where about 40–45 persons are employed. A third facility is located on Perry where Ildefonso Rebollar, Jesse's father, is plant manager. According to Jesse Rebollar, Respondent is the leading manufacturer of trailers in California.

Ernesto Tolentino works as an organizer for the Union. Tolentino, a licensed welder, applied for work at Respondent's Broadway facility. After completing an application and supplying a copy of his welder's license he was interviewed June 20 by Jesse Rebollar and Carlos Aldape, floor supervisor, and George Rojas, an employee. J. Rebollar explained that Tolentino's job duties would include fabricating custom trailers, welding gas and water tanks, and repairing trailers. He said that he was looking for a dependable welder who could do the work quickly and professionally. J. Rebollar said that the person who worked at the job before had done electrical, plumbing and other work besides welding and that when there was not welding work to do he wanted Tolentino to learn to do plumbing and electrical work. Tolentino answered that he was willing to learn those other trades. Tolentino said he was asking to be paid $15 per hour, but J. Rebollar said that most employees started at $7.50 but he offered Tolentino $9. They asked Tolentino to weld a tire mount and he did so. Rebollar then offered Tolentino $9.50 per hour and promised that if things worked out he would give Tolentino a $1 per hour raise after 30 days. Tolentino took a drug test and J. Rebollar explained that normally he waited for the results of the test to come back before he hired someone but on this occasion he asked how soon Tolentino could start working. Tolentino said he could start the next working day, a Monday.

Tolentino worked exclusively as a welder; he never did any electrical or plumbing work nor did Respondent offer to train him to perform other tasks. Aldape assigned the work to him but never assigned him work other than welding work. No one ever criticized Tolentino's work performance. After about a month Tolentino reminded J. Rebollar about the promised wage increase and Tolentino then received the $1 per hour increase.

Tolentino also began talking to the employees about the Union and passed out handbills to them. Three meetings were held outside the workplace with employees, Tolentino, and Robert Sanchez, another organizer for the Union. Two of these meetings occurred in July and the third in August. A fourth meeting was set for September 12, but it did not occur because Tolentino was laid off on September 7.

Tolentino began work as usual at 7 a.m. on September 7; on that day he was welding racks on a trailer. Tolentino knew that Respondent was in a rush to complete the work on that trailer. After lunch J. Rebollar told Tolentino to drop everything and take a walk with him. They walked out to the trailer yard where the completed trailers were kept. J. Rebollar pointed to the trailers and said that business was slow and the trailers were not selling. They then walked into J. Rebollar's office where Rebollar told Tolentino that although he did not want to, he had to let Tolentino go. J. Rebollar said that they were also laying off employees at the other facility. He told Tolentino that he had Tolentino's telephone number and would call him if work picked up. Rebollar said that Tolentino was paid for the rest of the day and could leave work immediately. Tolentino offered to come back to return the uniforms that Respondent had provided to him, but Rebollar said that there was no need to do so. At some point Tolentino commented that maybe "a little vacation" would not hurt. Tolentino was then escorted off the premises. Tolentino therefore was unable to complete the work on the trailer that Respondent was eager to finish. Tolentino was paid for the entire day and the uniforms that Rebollar allowed Tolentino to keep were worth about $300.

Before Tolentino left the premises J. Rebollar gave him a form that said, "Work has not picked up the way we expected. Not enough to keep him on board so we are letting him go."

[1] All dates are in 2007 unless otherwise indicated.

[2] Certain errors in the transcript are noted and corrected.

The form also indicated that Tolentino had been terminated and that his work was satisfactory in the categories of attendance, punctuality, appearance, attention to detail, and ability to learn. A copy of the form kept by Respondent was somewhat different in that it indicated that the "N" was circled beneath the question "able to rehire?" Although J. Rebollar denied he made that mark, I conclude that either he made that mark or caused it be made. Tolentino was the only certified welder at the Broadway facility and because there was welding work that needed to be done there the following Monday, Respondent temporarily transferred a welder from the Maple facility to complete the job that Tolentino had been working on and thereafter permanently transferred another welder from the Maple facility to the Broadway facility.

The foregoing facts are based on the testimony of Tolentino who I conclude was a credible witness. His testimony was consistent and logical and his demeanor was impressive. To the extent that J. Rebollar's testimony is inconsistent with the facts described above I do not credit it. As indicated above, Respondent was in a hurry to finish work on the trailer that Tolentino was working on but he was laid off before the end of the day and before finishing the work on the trailer. When I asked Jesse Rebollar why he did not let Tolentino complete the work day under these circumstances, he answered:

> No reason in particular. I just—my plans were to give him the check around 10:00 in the morning, and I try to pay—I don't do this very often, but when I do terminate someone, I give them the rest of the day off.

This explanation is entirely unconvincing and his demeanor suggested he was creating the answer rather than making a truthful response. This is an example of why I have chosen to credit Tolentino's testimony over J. Rebollar's.

The Monday following Tolentino's Friday layoff the employees at the Broadway facility were summoned to a meeting with Ildefonso Rebollar. I. Rebollar spoke to the assembled employees in Spanish. I. Rebollar told the employees that when there are big problems they call him so he can work them out. He mentioned that he had fired someone and that in every sack there is a rotten apple and when there is a rotten apple it has to be removed so that it will not make the other apples rotten. I. Rebollar told the employees that the employee whom he had fired could file a claim against the Company but that person would not succeed in the claim because Respondent had a piece of paper that protected them. He talked of a nearby factory where employees went on strike and Respondent's owner called him so he could talk to the strikers and he did so. I. Rebollar said he told the strikers that the owner was not going to bend to the stubbornness or demands of others, that he had a little money and he would close the doors to the factory and the workers would lose their jobs. I. Rebollar also told Respondent's employees that Respondent's owner's main income came from a shipbuilding facility in China where the workers were paid only $50 and that Respondent's Broadway facility meant nothing to the owner. I. Rebollar told the employees that there were rules that had to be followed and whoever did not want to do that, the door was open. He commented that the welders at the Maple facility were doing a good job and that trailers were not being sold and that there was no place to store them. He asked if there were any comments or questions, but no employees spoke.

Neither Tolentino nor the Union was mentioned by I. Rebollar during the meeting. However, I conclude that the employees would reasonably understand that the "rotten apple" and the employee who might file a claim against Respondent was Tolentino. After all, he was laid off the Friday afternoon before the Monday meeting. Indeed, records show that he was the only employee separated from employment by Respondent in about the 30 days preceding the meeting. There is no credible evidence or testimony to support any other conclusion. I also conclude that employees would reasonably conclude that Tolentino was "rotten" and would spoil the other employees was because he tried to get the employees to support the Union.

The foregoing facts are based on a composite of the testimony of four witnesses. Thomas Bahena has worked for Respondent for 5 years as an assembler at the Broadway facility. Jose Vargas has worked for Respondent installing metal molds since about August 2007. Jorge Rojas and Jesus Felix-Leon also work for Respondent. All these witnesses, in general, corroborated each other. Their demeanor while testifying appeared sincere. I also take into account the fact that these witnesses were current employees testifying against the interests of their employer. *Meyers Transport of New York,* 338 NLRB 958, 968 (2003). I have considered the testimony of Jesse Rebollar that at the Monday meeting I. Rebollar spoke to the employees about sales and production. In that talk, according to J. Rebollar, I. Rebollar did mention China but in the context that the employees were lucky that Respondent's owner had a business there and could take money from there to keep Respondent afloat. J. Rebollar admitted that I. Rebollar did mention an employee who filed a claim against the company, but claimed that this was in the context of a transfer of employees several years ago to avoid a layoff; in that situation Ildefonso Rebollar noted that one employee filed an unemployment compensation claim rather than accept the transfer but Respondent was able to successfully defend against the claim. There was no explanation as to why I. Rebollar would raise this matter at the meeting. When asked whether there was any discussion about getting rid of "rotten apples" Jesse Rebollar answered "Now, that right there, I don't remember at all, no." His demeanor when answering showed hesitancy and discomfort. This is another example of why I have not credited J. Rebollar's testimony. Ildefonso Rebollar likewise testified that he made no mention of "rotten apples" at the Monday meeting. When weighed against the record as a whole in this case, his testimony about the meeting is also unpersuasive.

J. Rebollar testified that Tolentino, although a skilled welder, worked slowly. Carlos Razo Ortiz has worked at the Broadway facility for almost 3 years. Razo, whose duties take him all over that facility, has some experience with welding. He testified that Tolentino was "very good" but "very slow." Adalpe also testified that Tolentino was good but slow. Hidalgo Roblido, who worked for Respondent for over 12 years, and Mario Corona, who worked there for almost 5 years, also testified that Tolentino was very slow. I conclude that Tolentino was a good welder but was slow. Razo, Hidalgo, and Corona

also testified concerning the Monday meeting, but their testimony seemed more designed to please their employer than accurately relate the contents of that meeting. Aldape testified that on two occasions he mentioned to Tolentino that they needed to "hand over" a trailer so Tolentino "needed to accelerate a little bit" to which Tolentino said that he would. Tolentino denied that Aldape ever told him that he was working too slowly or otherwise criticized his work performance although he admitted that on one occasion Aldape told him that he needed some work to be done quickly on a trailer. I conclude that Aldape never directly criticized Tolentino for working too slowly. Jesse Rebollar gave an example of where a welder might normally take 2–3 hours to perform a task, Tolentino took over a week. I simply do not credit this exaggerated testimony. As indicated, no one ever criticized Tolentino for working slowly, much less at a pace 20 times slower than normal.

J. Rebollar testified that sales were down and inventory was up. He admitted that Respondent's owner tries to avoid a layoff even when sales are down by building up inventory stock. In June, sales were $3,848,394; in July they were $3,758,001; in August they were $3,580,296; and in September they were $2,775,099. But J. Rebollar also admitted that sales are normally higher in the summer and winter and should be lower in the spring and fall. Concerning inventory levels, in June there were 198 units, in July there were 125 units, in August there were 205 units, in September there were 274 units, in October there were 292 units, in November there were 249 units, in December there were 194 units, in January 2008 there were 194 units, in February 2008 there were 200, in March 2008 there were 159, and in April 2008 there were 194 units.

During the time period June 2007 to May 2008, nine employees quit at the Broadway facility, including one employee the week before Tolentino was laid off. Also during that period one employee was fired after he threatened a supervisor with bodily harm for the second time. There is no evidence that any employee other than Tolentino was permanently laid off because of slow sales. During that same period Respondent hired 10 other employees to work at the Broadway facility, including two employees who were hired after Tolentino was laid off and one employee who was hired 15 days before Tolentino was laid off. There is no explanation as to why normal attrition could not have alleviated any need Respondent may have had to reduce payroll.

B. Analysis

I first address the 8(a)(1) allegations. The complaint alleges that during the Monday meeting Respondent threatened employees with plant closure and job loss if they supported the Union.[3] I have concluded above that the Monday meeting dealt with Tolentino's efforts to organize Respondent's employees and that during that meeting I. Rebollar told the employees that Respondent would close its doors and the employees would lose their jobs rather than permit unionization. By threatening employees with plant closure and job loss for supporting the Union, Respondent violated Section 8(a)(1). *Cardinal Home Products,* 338 NLRB 1004, 1011 (2003).

Continuing, the complaint alleges that Respondent threatened employees that it would move its business overseas if the employees supported the Union. To support this allegation the General Counsel first relies on the testimony of Felix-Leon. While being cross-examined by Respondent's counsel Felix-Leon was asked "At this meeting, there was no discussion of the owner of Carson Trailer moving the operations to China; correct?" Felix answered "I recall he said something about moving, but I don't exactly recall what." No other witnesses corroborated even this vague reference to moving. Next, the General Counsel argues that Respondent *implied* that it would move its operations overseas when I. Rebollar told the employees that Respondent had ship- building facilities in China where the employees were paid considerably less than Respondent's employees at the Broadway facility. The General Counsel is correct to the extent that he argues that unlawful threats can be implied and subtle; they need not be direct. But here I cannot find that employees might reasonably conclude that Respondent was threatening to move the Broadway operation overseas. Rather, in context I conclude that Respondent's message was that it had other operations where it made money and therefore might well afford to close the Broadway facility but this falls short of an implied threat to relocate the Broadway facility. I conclude that the General Counsel has not met his burden of providing credible evidence to prove this allegation and I therefore dismiss it.

Next, the complaint alleges that Respondent threatened to deny unemployment benefits to laid-off employees because employees supported the Union. I have concluded above that I. Rebollar told the employees at the Monday meeting that an employee (read Tolentino) might file a claim against Respondent but the claim would not succeed because Respondent had a piece of paper that it would use to defeat the claim. But there is insufficient credible evidence that I. Rebollar told the employees that Respondent would use false reasons or unlawful means to defeat any claim Tolentino might file. The General Counsel cites *Campo Slacks,* 250 NLRB 420, 423 (1980), enfd. mem. 659 F.2d 1069 (3d Cir. 1981). In that case the Board concluded that a statement that an employee would receive unemployment compensation if the employee did not give the employer a "hassle," under circumstances where the "hassle" referred to the employee's union activities, violated Section 8(a)(1). But that case is distinguishable because here Respondent did not connect the defeat of the claim with Tolentino's union activities or any false or unlawful reason. I conclude these remarks fall short of violating Section 8(a)(1) and I dismiss this allegation.

Finally, the complaint alleges that Respondent told employees to quit if they supported the Union. During the Monday meeting I. Rebollar told the assembled employees that Respondent would not give into their stubbornness or demands; that there were rules that had to be followed and the door was open for those employees who would not follow those rules. In context, I conclude Respondent was telling the employees that those employees who did not want to work in a nonunion work-

[3] Although these are separate allegations in the complaint the General Counsel in his brief deals with them together.

place should quit. This violates Section 8(a)(1). *Equipment Trucking Co.,* 336 NLRB 277 (2001).

I turn now to the 8(a)(3) allegation. In determining whether Tolentino's layoff was unlawful, I apply *Wright Line,* 251 NLRB 1083 (1980), enfd. 662 F.2d 889 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). See also *Manno Electric,* 321 NLRB 278 (1996). Tolentino engaged in union activity. Respondent contends that it did not learn of his support for the Union until after he was laid off. I disagree. At the Monday meeting Ildefonso Rebollar spoke of how Respondent had gotten rid of a "rotten apple" to avoid spoiling the rest of the apples. This was a not too subtle reference to Tolentino's union activities, *Penn Color, Inc.,* 261 NLRB 395, 405 (1982), and to getting rid of Tolentino to avoid having him spoil the other employees with his union activity. This not only shows knowledge of Tolentino's union activities but, in context, it is an implied admission that Tolentino was unlawfully terminated. Also, I have concluded above that Respondent violated Section 8(a)(1) by threatening employees with plant closure and job loss for supporting the Union and by telling employees to quit if they supported a union. The precipitous nature of the layoff, coming before the end of the workday and while important work remained to be completed, highlights the suspicious nature of Tolentino's layoff. I conclude that General Counsel has met his burden under *Wright Line.*

I now examine whether Respondent has shown it would have laid off Tolentino for lawful reasons even if he had not engaged in union activity. *T & J Trucking Co.,* 316 NLRB 771 (1998). Respondent argues that it laid off Tolentino because work was slow and inventory was high. But apparently Respondent's business is somewhat cyclical in nature and it has not shown that it lays off employees during the slow periods. Respondent hired employees shortly before and shortly after it laid off Tolentino; this casts doubt on Respondent's claim that it had to reduce payroll. Respondent experiences attrition in its workforce as employees leave for various reasons; it has not explained why normal attrition would not have resolved any payroll concerns it may have had. In its brief Respondent points to the fact that in December the employees were furloughed for about a 10-day period over the holidays where in the past they had been off only for Christmas and New Years days. But this fact does not assist Respondent in meeting its burden. It must show what motivated it to take the action against Tolentino in early September and not what motivated it to take action in late December.

At the hearing and in its brief Respondent argues that Tolentino was a slow worker. While I have concluded above that Respondent has exaggerated this matter, I have nonetheless concluded that Tolentino was a good but slow worker. I note that Respondent did not tell this to Tolentino at the time of the layoff, nor was Tolentino even warned that he needed to work more quickly. Keep in mind that Respondent employs about 40–45 employees at the Broadway facility; it has presented no evidence as to how Tolentino's good but slow work compared to the work pace of the other employees there. Remember that Tolentino was the only welder at that facility and he had to be replaced by another welder. Finally, the different versions of Tolentino's discharge form heighten the suspicious nature of Respondent's claims of a lawful reason for Tolentino's layoff. I conclude that Respondent has failed to show that it would have laid off Tolentino even if he had not supported the Union. By laying off Tolentino because he supported the Union, Respondent violated Section 8(a)(3) and (1).

CONCLUSIONS OF LAW

1. By threatening employees with plant closure and job loss for supporting the Union, and by telling employees to quit if they supported a union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By laying off Ernesto Tolentino because he supported the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent having discriminatorily laid off an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, Carson Trailer, Inc., Gardena, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with plant closure and job loss for employees for supporting the Union.

(b) Telling employees to quit if they supported a union.

(c) Laying off or otherwise discriminating against any employee for supporting the Sheet Metal Workers International Association, Local Union No. 170, AFL–CIO or any other union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, offer Ernesto Tolentino full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Make Ernesto Tolentino whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful layoff, and within 3 days thereafter notify the employee in writing that this has been done and that the layoff will not be used against him in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its Broadway facility[5] in Gardena, California, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 7, 2007.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[5] In his brief the General Counsel requests a posting only at this facility.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the Notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain on your behalf with your employer

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with plant closure and job loss for supporting the Sheet Metal Workers International Association, Local Union No. 170, AFL–CIO, or any other union.

WE WILL NOT tell you to quit if you support a union.

WE WILL NOT lay off or otherwise discriminate against any of you for supporting the Sheet Metal Workers International Association, Local Union No. 170, AFL–CIO, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Ernesto Tolentino full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Ernesto Tolentino whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful layoff of Ernesto Tolentino, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the layoff will not be used against him in any way.

CARSON TRAILER, INC.